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6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**  
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9 Leo Orlando Arredondo,

10 Plaintiff,

11 v.

12 Paul Penzone, et al.,

13 Defendants.  
14

No. CV-17-03226-PHX-DJH (JFM)

**ORDER**

15 Plaintiff filed a pro se Civil Rights Complaint pursuant to 42 U.S.C. § 1983 on  
16 September 18, 2017 (Doc. 1).

17 In the Notice of Assignment issued September 18, 2017 (Doc. 4), Plaintiff was  
18 warned that dismissal could result from failure to file a notice of change of address. In an  
19 Order entered January 23, 2018 (Doc. 6), Plaintiff was cautioned that failure to  
20 immediately file a notice of change of address "may result in the dismissal of this action."  
21 On December 10, 2018, the Clerk of the Court received a notice from MCSO Inmate Legal  
22 Services that Plaintiff was no longer in custody. Plaintiff had not filed a notice of change  
23 of address. On January 2, 2019, the Court ordered (Doc. 44) Plaintiff to either (1) show  
24 cause as to why this action should not be dismissed for failure to prosecute or (2) file a  
25 notice of change of address with the court, reflecting Plaintiff's current address. Plaintiff's  
26 copy of that Order was also returned undeliverable (Doc. 45). Plaintiff has not responded.

27 Plaintiff has the general duty to prosecute this case. *Fidelity Philadelphia Trust Co.*  
28 *v. Pioche Mines Consolidated, Inc.*, 587 F.2d 27, 29 (9th Cir. 1978). In this regard, it is

1 the duty of a plaintiff who has filed a pro se action to keep the Court apprised of his or her  
2 current address and to comply with the Court's orders in a timely fashion. This Court does  
3 not have an affirmative obligation to locate Plaintiff. "A party, not the district court, bears  
4 the burden of keeping the court apprised of any changes in his mailing address." *Carey v.*  
5 *King*, 856 F.2d 1439, 1441 (9th Cir. 1988). Plaintiff's failure to keep the Court informed  
6 of his new address constitutes failure to prosecute.

7 Rule 41(b) of the Federal Rules of Civil Procedure provides that "[i]f the plaintiff  
8 fails to prosecute or to comply with these rules or a court order, a defendant may move to  
9 dismiss the action." *In Link v. Wabash Railroad Co.*, 370 U.S. 626, 629-31 (1962), the  
10 Supreme Court recognized that a federal district court has the inherent power to dismiss a  
11 case *sua sponte* for failure to prosecute, even though the language of Rule 41(b) of the  
12 Federal Rules of Civil Procedure appears to require a motion from a party. Moreover, in  
13 appropriate circumstances, the Court may dismiss a complaint for failure to prosecute even  
14 without notice or hearing. *Id.* at 633.

15 In determining whether Plaintiff's failure to prosecute warrants dismissal of the  
16 case, the Court must weigh the following five factors: "(1) the public's interest in  
17 expeditious resolution of litigation; (2) the court's need to manage its docket; (3) the risk  
18 of prejudice to the defendants; (4) the public policy favoring disposition of cases on their  
19 merits; and (5) the availability of less drastic sanctions." *Carey*, 856 F.2d at 1440 (*quoting*  
20 *Henderson v. Duncan*, 779 F.2d 1421, 1423 (9th Cir. 1986)). "The first two of these factors  
21 favor the imposition of sanctions in most cases, while the fourth factor cuts against a default  
22 or dismissal sanction. Thus the key factors are prejudice and availability of lesser  
23 sanctions." *Wanderer v. Johnson*, 910 F.2d 652, 656 (9th Cir. 1990).

24 Here, the first, second, and third factors favor dismissal of this case. Plaintiff's  
25 failure to keep the Court informed of his address prevents the case from proceeding in the  
26 foreseeable future. The fourth factor, as always, weighs against dismissal. The fifth factor  
27 requires the Court to consider whether a less drastic alternative is available. Without  
28 Plaintiff's current address, however, certain alternatives are bound to be futile. Here, as in

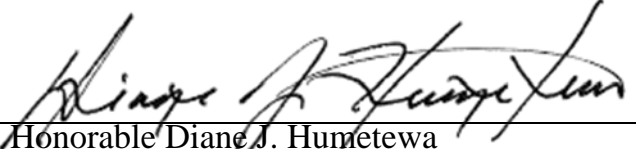
1 *Carey*, “[a]n order to show cause why dismissal is not warranted or an order imposing  
2 sanctions would only find itself taking a round trip tour through the United States mail.”  
3 856 F.2d at 1441.

4 The Court finds that only one less drastic sanction is realistically available. Rule  
5 41(b) provides that a dismissal for failure to prosecute operates as an adjudication upon the  
6 merits “[u]nless the court in its order for dismissal otherwise specifies.” In the instant case,  
7 the Court finds that a dismissal with prejudice would be unnecessarily harsh. The  
8 Complaint and this action will therefore be dismissed without prejudice pursuant to  
9 Rule 41(b) of the Federal Rules of Civil Procedure.

10 **IT IS ORDERED** that reference of this matter to the magistrate judge is withdrawn.

11 **IT IS FURTHER ORDERED** pursuant to Rule 41(b) of the Federal Rules of Civil  
12 Procedure this action is dismissed without prejudice and the Clerk of the Court shall enter  
13 judgment accordingly.

14 Dated this 24th day of January, 2019.

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18 Honorable Diane J. Humetewa  
United States District Judge  
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